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U.S. DISTRICT COURT
N.D. OF ALABAMA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

DANIEL SMITH,	)	
	)	
Plaintiff,	)	
	)	
versus	)	**Case Number:**
	)	
GMRI, INC.,	)	
d/b/a RED LOBSTER,	)	
	)	
Defendant.	)	

COMPLAINT

This is an action filed under the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et. seq. (hereinafter the "Fair Labor Standards Act" or "FLSA"). The plaintiff seeks payment for unpaid wages, overtime worked, and liquidated damages that he was deprived of due to the defendant's violations of the Fair Labor Standards Act. The plaintiff further seeks reasonable attorney's fees and costs pursuant to 29 U.S.C. § 216(b).

JURISDICTION & VENUE

1. Jurisdiction is conferred upon this Court by 28 U.S.C. §216(b) of the Fair Labor Standards Act, by 28 U.S.C. §1331, this action arising under laws of the United States, and by 28 U.S.C. §1337, this action arising under Acts of Congress regulating commerce.

2. Venue in this Court is proper pursuant to 28 U.S.C. §1391(b).

3. The defendant, GMRI, Inc., is a foreign corporation doing business in Alabama which employed the plaintiff to labor for its benefit in this District.

4. The cause of action set forth in this Complaint arose in this District.

PARTIES

A. Plaintiff

5. The plaintiff, Daniel Smith, is above the age of nineteen (19) years, is a resident of Jefferson County, Alabama, and is a former employee of the defendant at its Birmingham, Alabama business location.

6. During all times relevant to this Complaint, the plaintiff was subject to the full protections of the Fair Labor Standards Act and did not perform duties which would exempt him from its coverage.

B. Defendant

7. The defendant, GMRI, Inc., is a foreign corporation formed in Florida and doing business in Alabama as Red Lobster. GMRI, Inc. lists its registered office as Corporate Creations Network, Inc. which is located at 6 Office Park Circle #100 Mountain Brook, Alabama 35233.

8. The defendant is considered an employer within the meaning of the Fair Labor Standards Act, 29 U.S.C. §203(d), and is not exempt under the Act.

9. The defendant has employees engaged in commerce or in the production of goods for commerce and has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person.

10. The defendant is an enterprise whose annual gross volume of sales made or business done is not less than $500,000.

11. The defendant is engaged in the business of operating a restaurant.

FACTUAL ALLEGATIONS

12. The plaintiff was employed by the defendant as a server and paid hourly.

13. The plaintiff was employed by the defendant for over a year, ending in approximately October 2009. The plaintiff specifically notes that these dates are approximations and he will be relying upon the defendant's records to determine his exact dates of employment.

14. The defendant has a duty to keep certain records pursuant to 29 U.S.C. § 211(c) and the plaintiff will be relying upon these records in prosecuting his claims.

15. Throughout the plaintiff's employment, his duties required him to work while "off the clock." The plaintiff was never paid for those hours worked.

16. Specifically it was the defendant's policy that servers could not clock in until their first customer actually placed an order to the kitchen. During the time preceding the customer's order, while the server was serving drinks, talking to the customers and performing other duties as directed, that server was working "off the clock."

17. Further, the restaurant management would require the plaintiff to work off the clock at times throughout the day if the plaintiff had no customers in his section.

18. During these off the clock periods, the plaintiff would be required to perform labor for the benefit of the defendant and was not allowed to use his time as he wished.

19. The unpaid hours the plaintiff was forced to work caused him to be paid less than the applicable minimum wage and less than the required premium overtime rate of pay required by 29 U.S.C. § 206 and 29 U.S.C. § 207, respectively.

20. The plaintiff's duties did not exempt him from the protections of the Fair Labor Standards Act; specifically, the plaintiff spent the majority of his time serving food, providing customer service and performing other tasks as directed.

21. Upon information and belief, the defendant did not investigate whether its payroll practices conformed with the requirements of the Fair Labor Standards Act.

22. The defendant's violations of the Fair Labor Standards Act were willful and without good faith as defined by 29 U.S.C. § 255 and § 260, respectively.

COUNT ONE –

VIOLATIONS OF THE FAIR LABOR STANDARDS ACT

(Overtime Violations – 29 U.S.C. § 207)

23. The plaintiff realleges paragraphs 1 through 22 as though fully set forth herein.

24. The defendant has failed to compensate the plaintiff at the premium overtime rate required by 29 U.S.C. § 207 for each hour worked above forty (40) in each work week.

25. Neither the plaintiff nor the defendant was exempt from the coverage of the Fair Labor Standards Act.

26. The defendant's violations were willful.

27. The defendant, by such failures, has violated the requirements of the Fair Labor Standards Act.

WHEREFORE, the plaintiff requests this Honorable Court to enter a judgment for him and against the defendant for:

A. All amounts of all wages the plaintiff should have received during the past three (3) years pursuant to 29 U.S.C. § 207 but for the defendant's willful violation of his rights;

B. Liquidated damages in an equal amount pursuant to 29 U.S.C. § 216(b);

C. All attorney's fees and costs incurred in prosecuting these claims pursuant to 29 U.S.C. § 216(b); and

D. Any and all relief this Honorable Court finds to be just and due under the circumstances.

COUNT TWO –

VIOLATIONS OF THE FAIR LABOR STANDARDS ACT

(Minimum Wage Violations – 29 U.S.C. § 206)

28. The plaintiff realleges paragraphs 1 through 27 as though fully set forth herein.

29. The defendant is required to compensate the plaintiff for each hour worked pursuant to 29 U.S.C. § 206.

30. Neither the plaintiff nor the defendant was exempt from the coverage of the Fair Labor Standards Act.

31. The defendant, by failing to compensate the plaintiff in accordance with 29 U.S.C. § 206, has willfully violated the requirements of the Fair Labor Standards Act.

WHEREFORE, the plaintiff requests this Honorable Court to enter a judgment for him and against the defendant for:

A. All amounts of all wages the plaintiff should have received during the past three (3) years pursuant to 29 U.S.C. § 206 but for the defendant's willful violation of his rights;

B. Liquidated damages in an equal amount pursuant to 29 U.S.C. § 216(b);

C. All attorney's fees and costs incurred in prosecuting these claims pursuant to 29 U.S.C. § 216(b); and

D. Any and all relief this Honorable Court finds to be just and due under the circumstances.

Respectfully submitted,

____
Brad Medaris
ASB-0538-O58M

____
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ASB-1064-R80B

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PLEASE SERVE DEFENDANT VIA CERTIFIED MAIL AT THE FOLLOWING ADDRESS:

GMRI, Inc. d/b/a
Red Lobster
c/o Corporate Creations Network, Inc.
Registered Agent
6 Office Park Circle #100
Mountain Brook, Alabama 35233